

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

AMERICAN CONTRACTORS INDEMNITY
COMPANY

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VERSUS

* CASE NO. 08-205-FIP-CN

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CITY OF PORT ALLEN, LOUISIANA,
UNITED STATES OF AMERICA, and
SHARON FOREMAN LAVERGNE
LAVERGNE d/b/a LAVERGNE ELECTRIC

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JUDGE POLOZOLA
MAGISTRATE NOLAND

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CONSENT JUDGMENT

THIS COURT having reviewed the Joint Motion for Entry of Consent Judgment submitted by American Contractors Indemnity Company ("ACIC"), Sharon Foreman Lavergne d/b/a Lavergne Electric ("Lavergne Electric"), and the United States of America ("United States") and being fully advised in the premises, having reviewed the record and the law applicable to this action, it is **ORDERED, ADJUDGED, AND DECREED** that:

A. On January 6, 2005, Triangle Metals, Inc. ("Triangle Metals") filed a Petition for Concursus in the 18th Judicial District Court for the Parish of West Baton Rouge, State of Louisiana,

pursuant to which it sought payment of its claim against Elevated Tank Applicators, Inc. ("Elevated Tank") from funds owed by the City of Port Allen (the "City") to Elevated Tank for work that Elevated Tank performed for the City as general contractor in repairing and repainting certain of the City's elevated water towers (the "Project"). Triangle Metals' claim was for materials and labor furnished to Elevated Tank for the Project.

B. In its Petition for Concursus, Triangle Metals named as defendants: the City, Elevated Tank, ACIC, the United States Internal Revenue Service and Lavergne Electric. Triangle Metals alleged that on or about January 22, 2003, the City and Elevated Tank entered into a contract for the construction of a project under the Louisiana Public Works Act, La-R.S. 38:2241, *et seq.* The City was the Owner of the Project and Elevated Tank the General Contractor. As required by applicable Louisiana law, Elevated Tank provided statutory payment and performance bonds (on which Elevated Tank was the principal and ACIC was the surety) for the Project to the City.

C. Triangle Metals alleged that: (1) it was owed payment in the amount of \$6,793.77 by Elevated Tank for materials, supplies and/or labor furnished for the Project; (2) Lavergne Electric had asserted a claim for unpaid labor and materials supplied to Elevated Tank for the Project; and (3) the United States, through the Internal Revenue Service, had filed tax liens against Elevated Tank in East Baton Rouge Parish, Louisiana, on January 12, 2004, May 12, 2004, and May 25, 2004, for unpaid federal employment (Form 941) taxes for the fourth quarter of 2002 and all four quarters of 2003 and unpaid federal unemployment (Form 940) taxes for 2003 that totaled \$90,821.84 as of May 12, 2008.

D. The City, as the Owner who was still in possession of certain contract funds it had retained, deposited the sum of \$20,683.48 into the registry of the 18th Judicial District Court for the Parish of West Baton Rouge, State of Louisiana. These funds subsequently were transferred to the registry of this Court where the funds remain lodged in an interest-bearing account.

E. On April 4, 2008, the United States filed a Notice of Removal of Civil Action (Rec. Doc. 1) in this matter by which it removed the action commenced in the 18th Judicial District Court to the United States District Court for the Middle District of Louisiana .

F. While the case was pending, ACIC, the surety for Elevated Tank, paid the claim of Triangle Metals for \$6,793.77 in full. As a result, ACIC was subrogated to the rights of Elevated Tank to and upon the funds deposited by the City of Port Allen into the registry of the Court. After the case was removed, ACIC filed motions to substitute itself for Triangle Metals as plaintiff in the matter (Rec. Doc. 7) and to substitute the United States for the Internal Revenue Service (Rec. Doc. 10). The motions were granted (Rec. Docs. 8 & 11). The Court also dismissed Elevated Tank from the suit by its Opinion rendered August 12, 2009 (Rec. Doc. 24).

G. After removal of this matter to this Court, the City filed its Notice of No Pending Claim (Rec. Doc. 19) on August 18, 2008. Hence, it has no further claim to and upon the funds at issue.

H. By their Joint Motion for Entry of Consent Judgment, counsel for ACIC, Lavergne Electric, and the United States have advised the Court that their clients, as the remaining claimants to the funds at issue, have negotiated in good faith and resolved their respective claims to and upon the funds at issue. Having done so, these three claimants have in their Joint Motion set forth the

amounts and bases for their respective claims. Having reviewed these representations, the Court is satisfied that dividing the funds at issue in the amounts the three claimants propose constitutes a fair and appropriate resolution of this matter.

I. Taking into account the Joint Motion For Entry of Consent Judgment, applicable federal and Louisiana law, and the entire record in this case, **IT IS FURTHER ORDERED, ADJUDGED and DECREED** that:

- (1) the claim of ACIC to a portion of the funds lodged in the registry of the Court is hereby recognized and maintained and shall be paid in the amount of \$14,000.00 from said funds;
- (2) the claim of Sharon Foreman Lavergne d/b/a Lavergne Electric to a portion of the funds lodged in the registry of the Court is hereby recognized and maintained and shall be paid in the amount of \$1,166.59 from said funds;
- (3) the claim of the United States to a portion of the funds lodged in the registry of the Court is hereby recognized and maintained and shall be paid in an amount equal to the balance of the funds in the registry of the Court remaining after the claim of ACIC for \$14,000.00 and the claim of Lavergne Electric for \$1,166.59 are paid from said funds and any fee for the administration of such funds is deducted. The amount paid to the United States shall include, but not be limited to, all interest that has accrued on the original principal sum of \$20,683.48 deposited by the City of Port Allen with the 18th Judicial District Court.

(4) that, based upon the Court's determinations as to the amount to be paid each claimant as set forth in subparagraphs I.(1), I.(2), and I.(3) above, the Clerk of this Court is directed to disburse the funds presently lodged in the registry of this Court as soon as is possible, and is authorized and directed to draw checks on and disburse said funds (comprising \$20,683.48 in principal plus interest thereon) as follows:

(a) \$14,000.00 of principal only by check payable to "American Contractors Indemnity Company" to be delivered to ACIC's counsel:

Susan F. Clade, Esq.
Simon, Peragine, Smith & Redfearn, L.L.P.
1100 Poydras Street
30th Floor - Energy Centre
New Orleans, Louisiana 70163
(504) 569-2030;

(b) \$1,166.59 of principal only by check payable to "Sharon Foreman Lavergne d/b/a Lavergne Electric" to be delivered to Lavergne Electric's counsel:

Thomas W. Acosta, Jr., Esq.
911 7th Street, Suite E
Port Allen, Louisiana 70767
(225) 383-2302; and

(c) the balance of the funds remaining in the registry of the Court after payment of the sums set forth above in subparagraphs I.(4)(a) and I.(4)(b), including all sums constituting interest accrued on the principal deposit of \$20,683.48, less any fee for administration of said funds, by check payable to the "United States Treasury" to be delivered (via Federal Express with Federal Express charges billed to Account No. 1510-2400-9) to:

Robert E. Dozier
Trial Attorney, Tax Division, U.S. Department of Justice
555 Fourth Street, N.W./ Room 6211
Washington, D.C. 20001
Telephone: (202) 514-6073.

DONE, ORDERED, AND ADJUDGED this 12 day of Nov,

2009, in Baton Rouge, Louisiana.



HONORABLE RANK J. POLOZOLA
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND SUBSTANCE:

Respectfully submitted,

Date: Novemer 10, 2009

DAVID R. DUGAS
United States Attorney

/s/ John J. Gaupp

JOHN J. GAUPP

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SEE FOLLOWING PAGE FOR CONTINUED SIGNATURES
AS TO FORM AND SUBSTANCE